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Bord  
Pleanála

## Inspector's Report VV0021

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Lands at the Former Waterford Crystal Factory, Kilbarry, Co Waterford.
<b>Planning Authority</b>	Waterford City and County Council.
<b>Planning Authority VSL Reg. Ref.</b>	50.
<b>Site Owner</b>	Noel Frisby Construction Ltd.
<b>Date of Site Visit</b>	14 December 2017.
<b>Inspector</b>	Stephen Rhys Thomas.

## **1.0 Introduction**

- 1.1. This appeal refers to a section 7(3) notice issued by Waterford City and County Council, stating their intention to enter the site at Lands at the Former Waterford Crystal Factory, Kilbarry, Co Waterford on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015.

## **2.0 Site Location and Description**

- 2.1. The subject site is located south of Waterford City centre along the R680 Cork Road. Waterford Institute of Technology is located to the west and housing estates to the north and east. An Aldi supermarket and Maxol service garage are located to the south east and open lands are located to the south.
- 2.2. The large former factory site is bound by a number of roads, including the Cork Road, Claremont, Manor Saint John and Ashe Road; and can be accessed from each of these roads. The majority of the factory buildings have been demolished and some demolition material is stockpiled on the site. The former offices and visitor centre are still in situ, however, they are poorly maintained and show signs of vandalism.
- 2.3. The internal road system is still in place, together with surface car parking, these facilities are in poor repair as well. In the northern portion of the site the remains of a workshop building and possible pump house remain, but they too are in poor repair and damaged. There are mature landscaped areas in the southern portion of the site, these provide an attractive frontage to Cork and Ashe Road. The northern margins of the site backing onto housing estates are un-kept and vegetation growth is unchecked, dumping and litter is present in these areas.

### 3.0 **Planning Authority Decision**

3.1. **Planning Authority Notice:** Waterford City and County Council advised the site owner that the subject site (Planning Authority site ref. 50) had been identified as a vacant site. The notice, issued pursuant to section 7(3) of the Act and dated 31<sup>st</sup> July 2017, stated that particulars of the site have been entered on the Vacant Sites Register. The notice was accompanied by a map outlining the site boundary.

3.2. **Register of Vacant Sites Report:** Site is zoned 'Opportunity Sites', and is identified as Regeneration. The planning history of the site is broadly outlined, there have been numerous applications that concerned the use as a factory and tourist facility. There may be issues with remediation works on site. The site is suitable for inclusion on the VSR. The report is accompanied by a location map and colour photographs of the site. The report includes a detailed site suitability assessment for inclusion on the VSR and comprises the following:

- The site is a regeneration site and has been vacant/idle for previous 12 months.
- The site accords with section 5(1)(b) of the 2015 Act.
- The site accords with regeneration sites outlined in section 6(6) of the 2015 Act, insofar as the site is in a ruinous neglected condition.

A site inspection was carried out on the 24<sup>th</sup> January 2017.

### 4.0 **Development Plan / Planning History**

4.1. The **Waterford City Development Plan 2013 – 2019** is the operative development plan. The site is located on lands that are subject to zoning objective 'Opportunity Sites'. A small portion of the site is located in Flood Zones A and B.

Section 2.6a Urban Regeneration, states:

The Urban Regeneration and Housing Act 2015 introduced a vacant site levy in order to incentivise the development of vacant sites in urban areas for housing and regeneration purposes. The application of the levy is intended to bring underutilised and vacant sites and buildings in urban areas into beneficial use.

Waterford City & County Council will examine lands within the City, as appropriate, for the purposes as set out in the Urban Regeneration and Housing Act 2015, in relation to the vacant site levy.

It is an objective of this Plan to promote the appropriate development and renewal of urban sites and areas, identified having regard to the core strategy, that are in need of regeneration, in order to ensure there is no -

- (i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,
- (ii) urban blight and decay,
- (iii) anti-social behaviour, or
- (iv) shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

Table 2.6 outlines potential housing yield at the former Waterford Crystal site as nil.

#### **4.2. Relevant Planning History**

There are numerous planning applications with reference to the site's former industrial/factory use.

### **5.0 The Appeal**

#### **5.1. Grounds of Appeal**

5.1.1. The landowner has submitted an appeal to the Board, against the decision of Waterford City and County Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The appellant outlines the purchase history of the site, having acquired the lands in March 2013.
- Included in the agreement to purchase was a requirement to transfer the Integrated Pollution Prevention and Control (IPPC) and assume responsibilities in this regard. Since 2013 €155,174 has been spent on the resolution of the site in accordance with the requirements of the Environmental Protection Agency (EPA) in connection with the IPPC licence surrender process. In addition, there are a number of stockpiled materials on site and 24-surveillance is in place.

- The appellant has put new infrastructure in place on the site, comprising: new 6 inch water supply €35,000, new ESB transformer and electricity supply €47,500.
- It was not feasible to develop the site whilst the subject of an IPPC licence, confirmed by a correspondence from the Waterford City and Council Chief Executive (letter enclosed) to the EPA.
- The appellant has been in ongoing discussions with Waterford Institute of Technology (WIT) concerning the expansion of the campus onto the subject site. Until plans are agreed with WIT it would be premature to prepare a masterplan for the overall site.
- The appellant disputes the Council's assessment of the site for inclusion on the register, specifically – 'development was unlikely to take place without intervention', the site was weighted 8 out of 10.

The appeal is supported by the following: a financial statement outlining monies spent on the site with regard to EPA requirements, a letter from WIT outlining interest in the site for campus expansion and student housing, a letter from the Chief Executive of Waterford City and County Council and a drawing outlining a development exclusion zone on the site with respect to roads improvements and an aerial photograph of the site.

## 5.2. **Planning Authority Response**

5.2.1. The Planning Authority responded to the appeal, requesting that the following observations be noted by the Board:

- The substantive matters raised by the appellant were raised previously on foot of the Section 7(1) Notice, the planning authority will accept any determination with regard to the site and VSR.
- The planning authority note the grounds of appeal, however, they note that WIT have stated that they are unable to proceed with expansion at present. Therefore, the site may remain vacant and further negatively impact the character of the area.

- The planning authority defend their assessment methodology as a balanced approach to identifying sites for the VSR. They note that if matters change a site can be removed from the register.
- Reference is made to the site selection process that has already been forwarded to the Board.

## 6.0 Assessment

- 6.1. An appeal under section 9 of the Act, requires that the burden of showing that the site or a majority of the site was not vacant or idle for the 12 months preceding the date of entry on the Register is on the owner of the site. Section 9(3) of the Act states that the Board shall determine whether the site was vacant or idle for the duration of the 12 months concerned or was no longer a vacant site on the date on which the site was entered on the register. The subject site was entered onto the Waterford City and Council VSR on the 27<sup>th</sup> July 2017.
- 6.2. The subject site is located in an area zoned opportunity sites in the current City Development Plan. Section 2.6a of the Plan states that the vacant site levy applies to lands zoned in urban areas for housing and regeneration purposes. The site is considered regeneration lands for the purposes of the 2015 Act.
- 6.3. The Planner's report states that the site accords with section 5(1)(b) of the Urban and Regeneration and Housing Act 2015. In addition, the report states that it is the ruinous/neglected condition of the site that adversely impacts the character of the area in the context of Section 6(6) of the 2015 Act.
- 6.4. The appellant states that their ability to develop the site has been delayed and obstructed by the requirements of the Environmental Protection Agency (EPA) regarding the Integrated Pollution Prevention and Control (IPPC) surrender process. In addition, the appellant states that money has been expended in relation to EPA requirements and that new infrastructure has been installed on site; 6 inch watermain and a new ESB transformer. Finally, discussions are ongoing with Waterford Institute of Technology regarding the local expansion of their campus to the appeal site.
- 6.5. I note that no recent planning permissions have been permitted or sought with regard to the widespread redevelopment of the site. In addition, the appellant claims

that no development proposals could be progressed until the site's status in terms of pollution control had been fully resolved. Ongoing discussions with likely users or purchasers of the site, whilst of interest are not relevant to the determination of the site's condition in the context of the 2015 Act. In any case the existence or not of a valid planning permission would not in itself prevent the inclusion of the site on the register.

- 6.6. Any obstacles to development such as the decontamination of the site are a matter for the developer to resolve and not a consideration for addition to the Vacant Sites Register. The appellant has stated that they have invested a significant sum of money on the resolution of the lands and installed new infrastructure. 24 hour surveillance of the site is also carried out. Given the large scale of the site and the relatively minor extent of the works carried out, I do not consider that significant development has commenced on site or that the site is being put to beneficial use. The site is therefore vacant or idle.
- 6.7. The findings of the Council in relation to the condition of the site were confirmed by me on the date of my site visit. The majority of the site has been cleared of the former factory buildings and there are large mounds of demolition rubble stockpiled on the site. The former visitor centre and office buildings are in poor repair and show signs of vandalism. There are large areas of hardstanding and the various footprints of former factory buildings. In addition, litter has accumulated behind boundary walls near residential areas. A large proportion of the site is overgrown with vegetation. However, there are areas of landscaping and car parking along the Cork Road, but these areas are not well maintained and appear neglected. The overall appearance of the site is one of vacancy and no apparent use is being carried out at present. The site is therefore vacant and its lack of use indicates idleness. My assessment has considered the appeal in the context of section 5(1)(b) and section 6(6) of the 2015 Act, accordingly section 6(6) of the Act states:

*(6) A planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area for the purposes of this Part by reference to whether—*

*(a) land or structures in the area were, or are, in a ruinous or neglected condition,*

*(b) anti-social behaviour was or is taking place in the area, or*

*(c) there has been a reduction in the number of habitable houses, or the number of people living, in the area,*

*and whether or not these matters were affected by the existence of such vacant or idle land.*

6.8. The site being vacant or idle has adverse effects on the character of the area by reference to the neglected condition of the former Waterford Crystal Visitor Centre and Office buildings and the neglected state of the entire site. In addition, the presence of litter and vandalism indicates that anti-social behaviour was or is taking place. The character of the area is affected by the existence of such vacant or idle land.

6.9. The site is zoned 'opportunity sites' and is identified in the City Development Plan as land suitable for regeneration. The site meets the criteria for 'regeneration land' as stated in section 5(1)(b) and further elaborated upon by section 6(6) of the Urban and Regeneration and Housing Act 2015. Given the foregoing, I conclude that the majority of the site is vacant or idle in accordance with the 2015 Act. I am satisfied that the entry of the subject site on the Vacant Sites Register of Waterford City and County Council should be confirmed.

## **7.0 Recommendation**

7.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should confirm that the Lands at the Former Waterford Crystal Factory, Kilbarry, Co Waterford were vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 27<sup>th</sup> July 2017 shall be deemed to take effect from that date.

## **8.0 Reasons and Considerations**

8.1. Having regard to

(a) The evidence placed before the Board by the Planning Authority in relation to the condition and use of the site over the relevant period,



(b) The evidence in the appellant's submission,

(c) The report of the Planning Inspector, and

(d) the neglected condition of the former Waterford Crystal Visitor Centre and office buildings, the evidence that anti-social behaviour was or is taking place that results in adverse effects on the existing amenities of the area

the Board is satisfied that the site was vacant or idle for the relevant period.

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Stephen Rhys Thomas  
Planning Inspector

20 February 2018